

REMARKS

A non-final Office Action was mailed on October 4, 2007. Claims 1-2, 4-9, 11-18 and 21-26 are pending.

Claims 1-2, 5, 8-9, 12, 15-16, and 25-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz et al. (US 5758257) in view of Shapira (US 7085806). Claims 17-18 & 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz et al. in view of Cook et al. (U.S. Patent Publication 2003/0193504). Claims 21-22 & 24-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz et al. and Cook et al. and further in view of Shapira.

Reconsideration is respectfully requested in view of the arguments submitted herewith.

Applicant respectfully reiterates and continues the arguments set forth in Applicant's responses dated August 25, 2006, and January 19, 2007 and July 10, 2007. Applicant also respectfully asserts, with respect to claims 1-2, 4-9, 11-16 and 25-26 that one skilled in the art would not arrive at such claimed invention through the combination of Herz et al. and now Shapira.

Claim 1, as amended herein, requires:

1. (Currently Amended) A method for making a recommendation in a lifestyle recommendation machine, the method comprising:
providing a celebrity profile of a celebrity to a user;
making a recommendation to the user for an item, service, and/or event based on the celebrity profile; and
reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making the recommendation to the user.

Herz et al. teaches that customers could adopt the customer profiles of other individuals or programs such as "celebrity" profiles including the viewing preferences of different celebrities. (Herz et al., column 49, lines 1-6)

Shapira teaches the association of an image with a customer profile.

However, Applicant respectfully submits that each of Herz et al. and Shapira, and therefore the combination of Herz et al. and Shapira, fail to teach or reasonably suggest Applicant's claim element *reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making the recommendation to the user.*

In the present claims 1, 8, 15 and 16, and the claims dependent thereon, there are three common but separate features characterized by the active terms "providing," "making" and "reporting." The teaching of Herz et al., at columns 47-49, is limited to the formation of a recommendation using a celebrity profile. This is equivalent to the Applicant's "making" claim element. Thus, again, Herz et al. clearly fails to teach or reasonably suggest the affirmative "reporting" element.

The Examiner then asserts that *"It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity."* (emphasis added) However, the Shapira disclosure also does not teach the "reporting" claim element, and specifically the reporting of the recommendation through the celebrity profile. This is further supported by the Examiner's concluding remarks about the combination presenting a list of programs ... while displaying an image. However, simply *presenting a list of recommended programs to a customer based on a celebrity profile* is nothing more than passively associating a profile with an image, and does not in and of itself transcend into an affirmative **reporting by the profiled celebrity** to create an appearance during the reporting that the celebrity is making the recommendation to the user. The Examiner fails to appreciate that the combination of Herz et al. and Shapira fail to adequately address the Applicant's "reporting" by the profiled celebrity, as there is nothing in Shapira that would teach or motivate one skilled in the art to modify a Herz et al. celebrity profile channel with a report, announcement or a similar affirmative action by the

profiled celebrity. Combining Herz et al. with Shapira would simply result in an enhanced channel in Herz et al. where the celebrity profile is also identified by the picture of the celebrity. This is the equivalent of an enhanced “making” element from the Applicant’s claims. As such combination fails to adequately address the “reporting” elements from the pending claims, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness, and that all §103(a) rejections based on Herz et al. and Shapira should be withdrawn.

Claims 17-18 & 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz et al. in view of Cook et al. (U.S. Patent Publication 2003/0193504). Claims 21-22 & 24-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz et al. and Cook et al. and further in view of Shapira.

The Examiner asserts that the claimed “synthetic celebrity, amounts to a use argument. In other words, Herz broadly discloses that the customer may choose a celebrity profile, without discussing any particular type of celebrity profile. It is pointed out that the essence of this disclosure of Herz is that the customer may choose to substitute their personal profile with a profile of someone different from their own that they desire. Therefore one particular type of celebrity (i.e., synthetic celebrity), would not make a patentable distinction over a generic celebrity.” The Examiner further asserts that Herz does not say if whether the celebrity was real or created. Cook (Abstract; Para [0003-0004] & [0009-0018]) teaches the benefits of creating a synthetic profile, which allows the user to create a profile from a disparate range of characteristics. The combination of Herz & Cook provides for a customer substituting their profile for a synthetic celebrity profile.”

Applicant respectfully submits that claims 17-18 and 21-26 are patentable over the combination of Herz et al. and Cook et al. for two reasons. First, the combination of Herz et al. and Cook et al. fail to render obvious the “reporting” functionality of claims 17-18 and 21-26 in the same manner as the combination of Herz et al. and Shapira argued above with respect to claims 1-2, 4-9 and 11-16.

Second, Applicant respectfully disagrees with the Examiner that the claim limitation of a synthetic celebrity or a fictitious character played by a real celebrity amounts to nothing more than a use argument. The rejection based on a “synthetic character” from Cook et al. is really no different than the rejection based on a “virtual actor” disclosed in the Massey reference from the Office Action dated April 10, 2007. The only relevance of Cook et al. to the present claims is the use of the term “synthetic” and the creation of a “synthetic character.” The argument of a “use limitation” is clearly conclusory and without support in Applicant’s claims or specification. Applicant respectfully submits that the limitation of a synthetic celebrity or a fictitious character played by a real celebrity is clearly patentably distinct from a real celebrity as one celebrity is fictional and one celebrity is real, both of which are clearly defined and understood to one of ordinary skill in the art.

Applicant further respectfully submits that the Cook et al. teaching of a “synthetic character” fails to provide the basis for the obviousness combination with Herz et al. because the “synthetic character” is not a celebrity-type character, but is instead a generic character created using a hierarchy of personality effectors. There is no discussion whatsoever in Cook et al. of representing an identifiable synthetic celebrity or fictitious character played by a real celebrity as required by the claims. One skilled in the art would not be taught or motivated by Cook et al. to generate recommendations based on a profile of a synthetic celebrity or a fictitious character played by a real celebrity because Cook et al. fails to address the “celebrity” aspect of the claimed invention and simply discusses a “synthetic character,” which, when viewed in the context of the Cook et al. disclosure, is completely devoid of any connection to a synthetic celebrity or a fictitious character played by a real celebrity. The Examiner’s reliance on Cook et al. is misplaced because it is based solely on the use of the term “synthetic,” which use is simply generic and unrelated to a celebrity. This is quite evident with reference to the entire Cook et al. disclosure.

Accordingly, Applicant respectfully submits that one skilled in the art would not consider it obvious to modify Herz in view of Cook et al. with or without the teaching of Shapira to arrive at the claimed invention.

In view of the above amendments and remarks, it is believed that claims 1-2, 4-9, 11-18 and 21-26 are in condition for allowance. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper, not already paid through an EFS-Web filing, may be charged to Deposit Account No. 50-3894. Any overpayment may be credited to Deposit Account No. 50-3894.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'H. Wolin', is written over a horizontal line.

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